# UNITED STATES MINING LAWS,

AND

# REGULATIONS THEREUNDER.

GENERAL LAND OFFICE, OCTOBER 31, 1881.

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DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
*October* 29, 1881.

GENTLEMEN: Your attention is invited to the Revised Statutes of the United States and the amendments thereto in regard to

## MINING LAWS AND MINING RESOURCES.

### TITLE XXXII, CHAPTER 6.

Mineral lands reserved.

4 July, 1866, c. 166, s. 5, v. 14, p. 86.

SECTION 2318. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

Mineral lands open to purchase by citizens.

10 May, 1872, c. 152, s. 1. v. 17. p. 91.

U. S. *vs.* Gear, 3 How., 120.

SEC. 2319. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining-districts, so far as the same are applicable and not inconsistent with the laws of the United States.

Length of mining-claims upon veins or lodes.

10 May, 1872, c. 152, s. 2, v. 17, p. 91.

SEC. 2320. Mining-claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining-claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining-claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end-lines of each claim shall be parallel to each other.



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Proof of citizenship.

10 May, 1872, c. 152, s. 7, v. 17, p. 94.

SEC. 2321. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

Locators' rights of possession and enjoyment.

10 May, 1872, c. 152, s. 3, v. 17, p. 91.

SEC. 2322. The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end-lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

Owners of tunnels, rights of.

10 May, 1872, c. 152, s. 4, v. 17, p. 92.

SEC. 2323. Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

Regulations made by miners.

10 May, 1872, c. 152, s. 5, v. 17, p. 92.

SEC. 2324. The miners of each mining-district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining-claim, subject to the following requirements: The location must be distinctly marked on the ground so that

its boundaries can be readily traced. All records of mining-claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures.

Patents for mineral lands, how obtained.

10 May, 1872, c. 152, s. 6, v. 17, p. 92.

SEC. 2325. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land-office an application for a patent, under oath, showing such compliance, together with a plat and field-notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land-office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land-office, upon the filing of such applica-

tion, plat, field-notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published near to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States surveyor-general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land-office at the expiration to the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.

Adverse claim, proceedings on.

10 May, 1872, c. 152, s. 7, v. 17, p. 93.

SEC. 2326. Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the register of the land-office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim,

with the proper fees, and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment-roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of a title conveyed by a patent for a mining-claim to any person whatever.

Description of vein-claims on surveyed and unsurveyed lands.

10 May, 1872, c. 152, s. 8, v. 17, p. 94.

SEC. 2327. The description of vein or lode claims, upon surveyed lands, shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued for claims upon unsurveyed lands, the surveyor-general, in extending the surveys, shall adjust the same to the boundaries of such patented claim, according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.

Pending applications; existing rights.

10 May, 1872, c. 152, s. 9, v. 17, p. 94.

SEC. 2328. Applications for patents for mining-claims under former laws now pending may be prosecuted to a final decision in the General Land Office; but in such cases, where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter; and all patents for mining-claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter where no adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.

Conformity of placer-claims to surveys, limit of.

9 July, 1870, c. 235, s. 12, v. 16, p. 217.

SEC. 2329. Claims usually called "placers," including all forms of deposit, excepting veins of quartz or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

Subdivisions of ten-acre tracts; maximum of placer locations.

9 July, 1870, c. 235, s. 12, v. 16, p, 217.

SEC. 2330. Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer-claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser.

Conformity of placer-claims to surveys; limitation of claims.

10 May, 1872, c. 152, s. 10, v. 17, p. 94.

SEC. 2331. Where placer-claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant;

but where placer-claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral lands in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered, by any party qualified by law, for homestead or pre-emption purposes.

What evidence of possession, &c., to establish a right to a patent.

9 July, 1870, c 235, s. 13, v. 16, p. 217.

SEC. 2332. Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining-claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining-claim or property thereto attached prior to the issuance of a patent.

Proceedings for patent for placer-claim, &c.

10 May, 1872, c. 152, s. 11, v. 17, p. 94.

SEC. 2333. Where the same person, association, or corporation is in possession of a placer-claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer-claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer-claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer-claim, or any placer-claim not embracing any vein or lode claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer-claim, an application for a patent for such placer-claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer-claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer-claim is not known, a patent for the placer-claim shall convey all valuable mineral and other deposits within the boundaries thereof.

Surveyor-general to appoint surveyors of mining-claims, &c.

10 May, 1872, c. 152, s. 12, v. 17, p. 95.

SEC. 2334. The surveyor-general of the United States may appoint in each land-district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining-claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer-claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for

publication, he may designate any newspaper published in a land-district where mines are situated for the publication of mining-notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land-office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land Office.

Verification of affidavits, &c.

10 May, 1872, c. 152, s. 13, v. 17, p. 95.

SEC. 2335. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land-district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land-office. In cases of contest as to the mineral or agricultural character of the land, the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such party cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land-office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

Where veins intersect, &c.

10 May, 1872, c. 152, s. 14, v. 17, p. 96.

SEC. 2336. Where two or more veins intersect or cross each other, priority of title shall govern; and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

Patents for non-mineral lands, &c.

10 May, 1872, c. 152, s. 15, v. 17, p. 96.

SEC. 2337. Where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface-ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz-mill or reduction-works, not owning a mine in connection therewith, may also receive a patent for his mill-site, as provided in this section.

What conditions of sale may be made by local legislature.

26 July, 1866, c. 262, s. 5, v. 14, p. 252.

SEC. 2338. As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

Vested rights to use of water for mining, &c.; right of way for canals.

26 July, 1866, c. 262, s. 9, v. 14, p. 253.

SEC. 2339. Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

Patents, pre-emptions, and homesteads subject to vested and accrued water-rights.

9 July, 1870, c. 235, s. 17, v. 16, p. 218.

SEC. 2340. All patents granted, or pre-emption or homesteads allowed, shall be subject to any vested and accrued water-rights, or rights to ditches and reservoirs used in connection with such water-rights, as may have been acquired under or recognized by the preceding section.

Mineral lands in which no valuable mines are discovered, open to homesteads.

26 July, 1866, c. 262, s. 10, v. 14, p. 253.

SEC. 2341. Wherever, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of pre-emption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or they may avail themselves of the provisions of chapter five of this Title, relating to "HOMESTEADS."

Mineral lands, how set apart as agricultural lands.

26 July, 1866, c. 262, s. 11, v. 14, p. 253.

SEC. 2342. Upon the survey of the lands described in the preceding section, the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to pre-emption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.

Additional land-districts and officers, power of the President to provide.

26 July, 1866, c. 262, s. 7, v. 14, p. 252.

SEC. 2343. The President is authorized to establish additional land-districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.

Provisions of this chapter not to affect certain rights.

10 May, 1872, c. 152, s. 16, v. 17, p. 96.

9 July, 1870, c. 235, s. 17, v. 16, p. 218.

SEC. 2344. Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions of the act entitled "An act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July twenty-five, eighteen hundred and sixty-six.

Mineral lands in certain States excepted.

18 Feb., 1873, c. 159, v. 17, p. 465.

SEC. 2345. The provisions of the preceding sections of this chapter shall not apply to the mineral lands situated in the States of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase

according to legal subdivisions, in like manner as before the tenth day of May, eighteen hundred and seventy-two. And any bona fide entries of such lands within the States named since the tenth of May, eighteen hundred and seventy-two, may be patented without reference to any of the foregoing provisions of this chapter. Such lands shall be offered for public sale in the same manner, at the same minimum price, and under the same rights of pre-emption as other public lands.

Grants of lands to States or corporations not to include mineral lands.

30 Jan., 1865, Res. No. 10, v. 13, p. 567.

SEC. 2346. No act passed at the first session of the thirty-eighth Congress, granting lands to States or corporations to aid in the construction of roads, or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.

## REPEAL PROVISIONS.

### TITLE LXXIV.

What Revised Statutes embrace.

SEC. 5595. The foregoing seventy-three titles embrace the statutes of the United States general and permanent in their nature, in force on the 1st day of December, one thousand eight hundred and seventy-three, as revised and consolidated by commissioners appointed under an act of Congress, and the same shall be designated and cited as The Revised Statutes of the United States.

Repeal of acts embraced in revision.

SEC. 5596. All acts of Congress passed prior to said first day of December, one thousand eight hundred and seventy-three, any portion of which is embraced in any section of said revision, are hereby repealed, and the section applicable thereto shall be in force in lieu thereof; all parts of such acts not contained in such revision, having been repealed or superseded by subsequent acts, or not being general and permanent in their nature: *Provided*, That the incorporation into such revision of any general and permanent provision, taken from an act making appropriations, or from an act containing other provisions of a private, local, or temporary character, shall not repeal, or in any way affect any appropriation, or any provision of a private, local or temporary character, contained in any of said acts, but the same shall remain in force; and all acts of Congress passed prior to said last-named day no part of which are embraced in said revision, shall not be affected or changed by its enactments.

Accrued rights reserved.

SEC. 5597. The repeal of the several acts embraced in said revision, shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner, as if said repeal, had not been made; nor shall said repeal, in any manner affect the right to any office, or change the term or tenure thereof.

Prosecutions and punishments.

SEC. 5598. All offenses committed, and all penalties or forfeitures incurred under any statute embraced in said revision prior to said repeal, may be prosecuted and punished in the same manner and with the same effect, as if said repeal had not been made.

Acts of limitation.

SEC. 5599. All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, embraced in said revision and covered by said repeal, shall not be affected thereby, but all suits, proceedings or prosecutions, whether civil or criminal, for causes arising, or acts done or committed prior to said repeal, may be commenced and prosecuted within the same time as if said repeal had not been made.

Arrangement and classification of sections.

SEC. 5600. The arrangement and classification of the several sections of the revision have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the Title, under which any particular section is placed.

Acts passed since Dec. 1, 1873, not affected.

SEC. 5601. The enactment of the said revision is not to affect or repeal any act of Congress passed since the 1st day of December, one thousand eight hundred and seventy-three, and all acts passed since that date are to have full effect as if passed after the enactment of this revision, and so far as such acts vary from, or conflict with any provision contained in said revision, they are to have effect as subsequent statutes, and as repealing any portion of the revision inconsistent therewith.

Approved, June 22, 1874.

The following is an act of Congress approved June 6, 1874:

AN ACT to amend the act entitled "An act to promote the development of the mining resources of the United States," passed May tenth, eighteen hundred and seventy-two.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the provisions of the fifth section of the act entitled "An act to promote the development of the mining resources of the United States," passed May tenth, eighteen hundred and seventy-two, which requires expenditures of labor and improvements on claims located prior to the passage of said act, are hereby so amended that the time for the first annual expenditure on claims located prior to the passage of said act shall be extended to the first day of January, eighteen hundred and seventy-five.

The following is an act of Congress approved February 11, 1875:

AN ACT to amend section two thousand three hundred and twenty-four of the Revised Statutes, relating to the development of the mining resources of the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section two thousand three hundred and twenty-four of the

Revised Statutes be, and the same is hereby amended so that where a person or company has or may run a tunnel for the purposes of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act, and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act.

The following is an act of Congress approved May 5, 1876:

AN ACT to exclude the States of Missouri and Kansas from the provisions of the act of Congress entitled "An act to promotes the development of the mining resources of the United States," approved May tenth, eighteen hundred and seventy-two.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That within the States of Missouri and Kansas deposits of coal, iron, lead, or other mineral be, and they are hereby, excluded from the operation of the act entitled "An act to promote the development of the mining resources of the United States," approved May tenth, eighteen hundred and seventy-two, and all lands in said States shall be subject to disposal as agricultural lands.

The following is an act of Congress approved June 3, 1878:

AN ACT authorizing the citizens of Colorado, Nevada, and the Territories to fell and remove timber on the public domain for mining and domestic purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all citizens of the United States and other persons, bona fide residents of the State of Colorado or Nevada, or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said States, Territories, or districts of which such citizens or persons may be at the time bona fide residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: *Provided*, The provisions of this act shall not extend to railroad corporations.

SEC. 2. That it shall be the duty of the register and the receiver of any local land-office in whose district any mineral land may be situated to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by this act, within their respective land-districts; and, if so, they shall immediately notify the Commissioner of the General Land Office of that fact; and all necessary expenses incurred in making such proper examinations shall be paid and allowed

such register and receiver in making up their next quarterly accounts.

SEC. 3. Any person or persons who shall violate the provisions of this act, or any rules and regulations in pursuance thereof made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.

The following is an act of Congress approved January 22, 1880:

AN ACT to amend sections twenty-three hundred and twenty-four and twenty-three and twenty-five of the Revised Statutes of the United States concerning mineral lands.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section twenty-three hundred and twenty-five of the Revised Statutes of the United States be amended by adding thereto the following words: "*Provided*, That where the claimant for a patent is not a resident of or within the land-district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits: *And provided*, That this section shall apply to all applications now pending for patents to mineral lands."

SEC. 2. That section twenty-three hundred and twenty-four of the Revised Statutes of the United States be amended by adding the following words: "*Provided*, That the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim, and this section shall apply to all claims located since the tenth day of May, anno Domini eighteen hundred and seventy-two."

The following is an act of Congress approved March 3, 1881:

AN ACT to amend section twenty-three hundred and twenty-six of the Revised Statutes relating to suits at law affecting the title to mining-claims.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That if, in any action brought pursuant to section twenty-three hundred and twenty-six of the Revised Statutes, title to the ground in controversy shall not be established by either party, the jury shall so find, and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the land-office or be entitled to a patent for the ground in controversy until he shall have perfected his title.

## MINERAL LANDS OPEN TO EXPLORATION, OCCUPATION, AND PURCHASE.

1. It will be perceived that by the foregoing provisions of law the mineral lands in the public domain, surveyed or unsurveyed, are open to exploration, occupation, and purchase, by all citizens of the United States and all those who have declared their intention to become such.

## STATUS OF LODE-CLAIMS LOCATED PRIOR TO MAY 10, 1872.

2. By an examination of the several sections of the Revised Statutes it will be seen that the *status* of lode-claims located *previous* to the 10th May, 1872, is not changed with regard to their *extent along the lode or width of surface.*

3. Mining rights acquired under such previous locations are, however, enlarged by said Revised Statutes in the following respect, viz: The locators of all such previously taken veins or lodes, their heirs and assigns, so long as they comply with the laws of Congress and with State, Territorial, or local regulations not in conflict therewith, governing mining-claims, are invested with the exclusive possessory right of all the surface included within the lines of their locations, and of all veins, lodes, or ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such locations at the surface, it being expressly provided, however, that the right of possession to such outside parts of said veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as aforesaid, through the end-lines of their locations so continued in their own direction that such planes will intersect such exterior parts of such veins, lodes, or ledges; no right being granted, however, to the claimant of such outside portion of a vein or ledge to enter upon the surface location of another claimant.

4. It is to be distinctly understood, however, that the law limits the possessory right to veins, lodes, or ledges, *other* than the one named in the original location, to such as were not *adversely claimed on May* 10, 1872, and that where such other vein or ledge was so adversely claimed at that date, the right of the party so adversely claiming is in no way impaired by the provisions of the Revised Statutes.

5. In order to hold the possessory title to a mining-claim located prior to May 10, 1872, and for which a patent has not been issued, the law requires that *ten dollars* shall be expended annually in labor or improvements on each claim of *one hundred feet* on the course of the vein or lode until a patent shall have been issued therefor; but where a number of such claims are held in common upon the same vein or lode the aggregate expenditure that would be necessary to hold all the claims, at the rate of ten dollars per hundred feet, may be made upon any one claim; a failure to comply with this requirement in any one year subjecting the claim upon which such failure occurred to relocation by other parties, the same as if no previous location thereof had ever been made, unless the claimants under the original location shall have resumed work thereon after such failure and before such relocation. The first annual expenditure upon claims of this class should have been performed subsequent to May 10, 1872, and prior to January 1, 1875. From and after January 1, 1875, the required amount must be expended *annually* until patent issues. By decision of the honorable Secretary of

the Interior, dated March 4, 1879, such annual expenditures are not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

6. Upon the failure of any one of several co-owners of a vein, lode, or ledge, which has not been entered, to contribute his proportion of the expenditures necessary to hold the claim or claims so held in ownership in common, the co-owners who have performed the labor, or made the improvements, as required by said Revised Statutes, may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days; and if upon the expiration of ninety days after such notice in writing, or upon the expiration of one hundred and eighty days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his co-owners, who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the sworn statement of the publisher as to the facts of publication, giving dates and a printed copy of the notice published, should be furnished, and the claimant must swear that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the statute.

## PATENTS FOR VEINS OR LODES HERETOFORE ISSUED.

7. Rights under patents for veins or lodes heretofore granted under previous legislation of Congress are enlarged by the Revised Statutes so as to invest the patentee, his heirs or assigns, with title to all veins, lodes, or ledges, throughout their entire depth, the top or apex of which lies within the end and side boundary-lines of his claim on the surface, as patented, extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of the claim at the surface. The right of possession to such outside parts of such veins or ledges to be confined to such portions thereof as lie between vertical planes drawn downward through the end-lines of the claims at the surface, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges, it being expressly provided, however, that all veins, lodes, or ledges, the top or apex of which lies inside such surface locations, *other* than the one named in the patent, which were *adversely claimed on the 10th May*, 1872, are excluded from such conveyance by patent.

8. Applications for patents for mining-claims pending at the date of the act of May 10, 1872, may be prosecuted to final decision in the General Land Office, and where no adverse rights are affected thereby, patents will be issued in pursuance of the provisions of the Revised Statutes.

## MANNER OF LOCATING CLAIMS ON VEINS OR LODES AFTER MAY 10, 1872.

9. From and after the 10th May, 1872, any person who is a citizen of the United States or who has declared his intention to become a citizen, may locate, record, and hold a mining-claim of *fifteen hundred linear feet* along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint

location of such claim of *fifteen hundred feet*, but in no event can a location of a vein or lode made subsequent to May 10, 1872, exceed fifteen hundred feet along the course thereof, whatever may be the number of persons composing the association.

10. With regard to the extent of surface-ground adjoining a vein or lode, and claimed for the convenient working thereof, the Revised Statutes provide that the lateral extent of locations of veins or lodes made after May 10, 1872, shall in no case *exceed three hundred feet on each side of the middle of the vein at the surface*, and that no such surface-rights shall be limited by any mining regulations to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th May, 1872, may render such limitation necessary; the end-lines of such claims to be in all cases parallel to each other. Said lateral measurements cannot extend beyond three hundred feet on *either* side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet cannot be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration *where* the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

11. By the foregoing it will be perceived that no lode-claim located after the 10th May, 1872, can exceed a parallelogram fifteen hundred feet in length by six hundred feet in width, but whether surface-ground of that width can be taken, depends upon the local regulations or State or Territorial laws in force in the several mining-districts; and that no such local regulations or State or Territorial laws shall limit a vein or lode claim to less than fifteen hundred feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than fifty feet in width, unless adverse claims existing on the 10th day of May, 1872, render such lateral limitation necessary.

12. It is provided by the Revised Statutes that the miners of each district may make rules and regulations not in conflict with the laws of the United States, or of the State or Territory in which such districts are respectively situated, governing the location, manner of recording, and amount of work necessary to hold possession of a claim. They likewise require that the location shall be so distinctly marked on the ground that its boundaries may be readily traced. This is a very important matter, and locators cannot exercise too much care in defining their locations at the outset, inasmuch as the law requires that all records of mining locations made subsequent to May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a *description of the claim or claims* located, by reference to some natural object or permanent monument, as will identify the claim.

13. The statutes provide that no lode-claim shall be recorded until after the discovery of a vein or lode within the limits of the claim located, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes to the exclusion of *bona fide* prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

14. The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft, or run a tunnel or drift, to a sufficient depth therein to discover and develop a mineral-

bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface. His location notice should give the course and distance as nearly as practicable from the discovery-shaft on the claim, to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, &c., which may be in the immediate vicinity, and which will serve to perpetuate and fix the *locus* of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

15. In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface-ground, and at the point of discovery or discovery-shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery; it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of fifteen hundred feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery-point.

16. Within a reasonable time, say twenty days after the location shall have been marked on the ground, or such time as is allowed by the local laws, notice thereof, accurately describing the claim in manner aforesaid, should be filed for record with the proper recorder of the district, who will thereupon issue the usual certificate of location.

17. In order to hold the possessory right to a location made since May 10, 1872, not less than one hundred dollars' worth of labor must be performed, or improvements made thereon annually until entry shall have been made. Under the provisions of the act of Congress approved January 22, 1880, the first annual expenditure becomes due and must be performed during the calendar year succeeding that in which the location was made. Expenditure made or labor performed prior to the first day of January succeeding the date of location will not be considered as a part of, or applied upon the first annual expenditure required by law. Failure to make the expenditure or perform the labor required will subject the claim to relocation by any other party having the necessary qualifications, unless the original locator, his heirs, assigns or legal representatives have resumed work thereon after such failure and before such relocation.

18. The expenditures required upon mining-claims may be made from the surface or in running a tunnel for the development of such claims, the act of February 11, 1875, providing that where a person or company has, or may, run a tunnel for the purpose of developing a lode or lodes owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same.

19. The importance of attending to these details in the matter of location, labor, and expenditure will be the more readily perceived when it is understood that a failure to give the subject proper attention may invalidate the claim.

## TUNNEL RIGHTS.

20. Section 2323 provides that where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins or lodes on the line of said tunnel.

21. The effect of this is simply to give the proprietors of a mining-tunnel run in good faith the possessory right to fifteen hundred feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist, within three thousand feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the *line thereof* and within said distance of three thousand feet, unless such lodes appear upon the surface or were previously known to exist.

22. The term "face," as used in said section, is construed and held to mean the first working-face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the three thousand feet are to be counted, upon which prospecting is prohibited as aforesaid.

23. To avail themselves of the benefits of this provision of law, the proprietors of a mining-tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel-right; the actual or proposed course or direction of the tunnel; the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the *locus* in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the three thousand feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to the specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

24. At the time of posting notice and marking out the lines of the tunnel as aforesaid, a full and correct copy of such notice of location defining the tunnel-claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is

*bona fide* their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

25. By a compliance with the foregoing much needless difficulty will be avoided, and the way for the adjustment of legal rights acquired in virtue of said section 2323 will be made much more easy and certain.

26. This office will take particular care that no improper advantage is taken of this provision of law by parties making or professing to make tunnel locations, ostensibly for the purposes named in the statute, but really for the purpose of monopolizing the lands lying in front of their tunnels to the detriment of the mining interests and to the exclusion of *bona fide* prospectors or miners, but will hold such tunnel claimants to a strict compliance with the terms of the statutes; and a *reasonable diligence* on their part in prosecuting the work is one of the essential conditions of their implied contract. Negligence or want of due diligence will be construed as working a forfeiture of their right to all undiscovered veins on the line of such tunnel.

## MANNER OF PROCEEDING TO OBTAIN GOVERNMENT TITLE TO VEIN OR LODE CLAIMS.

27. By section 2325 authority is given for granting titles for mines by patent from the government to any person, association, or corporation, having the necessary qualifications as to citizenship and holding the right of possession to a claim in compliance with law.

28. The claimant is required in the first place to have a correct survey of his claim made under authority of the surveyor-general of the State or Territory in which the claim lies; such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. Four plats and one copy of the original field-notes, in each case, will be prepared by the surveyor-general; one plat and the original field-notes to be retained in the office of the surveyor-general, one copy of the plat to be given the claimant for posting upon the claim, one plat and a copy of the field-notes to be given the claimant for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the surveyor-general to the register of the proper land-district to be retained on his files for future reference.

29. The claimant is then required to post a copy of the plat of such survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, mine, or lode; the mining-district and county; whether the location is of record, and, if so, where the record may be found; the number of feet claimed along the vein and the presumed direction thereof; the number of feet claimed on the lode in each direction from the point of discovery, or other well-defined place on the claim; the name or names of adjoining claimants on the same or other lodes; or, if none adjoin, the names of the nearest claims, &c.

30. After posting the said plat and notice upon the premises, the claimant will file with the proper register and receiver a copy of such plat, and the field-notes of survey of the claim, accompanied by the affi-

davit of at least two credible witnesses, that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting; a copy of the *notice* so posted to be attached to, and form a part of, said affidavit.

31. Attached to the field-notes so filed must be the sworn statement of the claimant that he has the possessory right to the premises therein described, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining-district, State, or Territory in which the claim lies, and with the mining laws of Congress; such sworn statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent.

32. This affidavit should be supported by appropriate evidence from the mining recorder's office as to his possessory right, as follows, viz: Where he claims to be a locator, a full, true, and correct copy of such location should be furnished, as the same appears upon the mining records; such copy to be attested by the seal of the recorder, or if he has no seal, then he should make oath to the same being correct, as shown by his records; where the applicant claims as a locator in company with others who have since conveyed their interests in the lode to him, a copy of the original record of location should be filed, together with an abstract of title from the proper recorder, under seal or oath as aforesaid, tracing the co-locator's possessory rights in the claim to such applicant for patent; where the applicant claims only as a purchaser for valuable consideration, a copy of the location record must be filed, under seal or upon oath as aforesaid, with an abstract of title certified as above by the proper recorder, tracing the right of possession by a continuous chain of conveyances from the original locators to the applicant, also certifying that no conveyances affecting the title to the claim in question appear of record in his office other than those set forth in the accompanying abstract.

33. In the event of the mining records in any case having been destroyed by fire or otherwise lost, affidavit of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the affidavit of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, &c.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession, and tend to establish his claim, should be filed.

34. Upon the receipt of these papers the register will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of sixty days, in a newspaper published nearest to the claim; and will post a copy of such notice in his office for the same period. In all cases sixty days must intervene between the first and the last insertion of the notice in such newspaper. When the notice is published in a *weekly* newspaper ten consecutive insertions are necessary; when in a *daily* newspaper the notice must appear in each issue for the required period.

35. The notices so published and posted must be as full and complete as possible, and embrace all the *data* given in the notice posted upon the claim.

36. Too much care cannot be exercised in the preparation of these

notices, inasmuch as upon their accuracy and completeness will depend, in a great measure, the regularity and validity of the whole proceeding.

37. The claimant, either at the time of filing these papers with the register, or at any time during the sixty days' publication, is required to file a certificate of the surveyor-general that not less than five hundred dollars' worth of labor has been expended or improvements made upon the claim by the applicant or his grantors; that the plat filed by the claimant is correct; that the field-notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporated into a patent, serve to fully identify the premises, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the *locus* thereof.

38. It will be the more convenient way to have this certificate indorsed by the surveyor-general, both upon the plat and field-notes of survey filed by the claimant as aforesaid.

39. After the sixty days' period of newspaper publication has expired the claimant will file his affidavit, showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said sixty days' publication, giving the dates.

40. Upon the filing of this affidavit the register will, if no adverse claim was filed in his office during the period of publication, permit the claimant to pay for the land according to the area given in the plat and field-notes of survey aforesaid, at the rate of five dollars for each acre and five dollars for each fractional part of an acre, the receiver issuing the usual duplicate receipt therefor. The claimant will also make a sworn statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the register and receiver of the land-office; after which the whole matter will be forwarded to the Commissioner of the General Land Office and a patent issued thereon if found regular.

41. In sending up the papers in the case the register must not omit certifying to the fact that the notice was posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued.

42. The consecutive series of numbers of mineral entries must be continued, whether the same are of lode or placer claims.

43. The surveyor-general must continue to designate all surveyed mineral claims as heretofore by a progressive series of numbers, beginning with lot No. 37 in each township; the claim to be so designated at date of filing the plat, field-notes, &c., in addition to the local designation of the claim; it being required in all cases that the plat and field-notes of the survey of a claim must, in addition to the reference to permanent objects in the neighborhood, describe the *locus* of the claim with reference to the lines of public surveys by a line connecting a corner of the claim with the nearest public corner of the United States surveys, unless such claim be on unsurveyed lands at a remote distance from such public corner, in which latter case the reference by course and distance to permanent objects in the neighborhood will be a sufficient designation by which to fix the *locus* until the public surveys shall have been closed upon its boundaries.

## ADVERSE CLAIMS.

44. Section 2326 provides for adverse claims, fixes the time within which they shall be filed to have legal effect, and prescribes the manner of their adjustment.

45. Said section requires that the adverse claim shall be filed during the period of publication of notice; that it must be on the oath of the adverse claimant; and that it must show the "*nature*," the "*boundaries*," and the "*extent*" of the adverse claim.

46. In order that this section of law may be properly carried into effect, the following is communicated for the information of all concerned:

47. An adverse mining-claim must be filed with the register of the same land-office with whom the application for patent was filed, or in his absence with the receiver, and within the sixty days' period of newspaper publication of notice.

48. The adverse notice must be duly sworn to by the person or persons making the same before an officer authorized to administer oaths within the land-district, or before the register or receiver; it will fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator; if the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a mere verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the affidavit of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.

49. In order that the "*boundaries*" and "*extent*" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict. This plat must be made from an actual survey by a United States deputy surveyor, who will officially certify thereon to its correctness; and in addition there must be attached to such plat of survey a certificate or sworn statement by the surveyor as to the approximate value of the labor performed or improvements made upon the claim by the adverse party or his predecessors in interest, and the plat must indicate the position of any shafts, tunnels, or other improvements, if any such exist, upon the claim of the party opposing the application, and by which party said improvements were made.

50. Upon the foregoing being filed within the sixty days as aforesaid, the register, or in his absence the receiver, will give notice in writing to *both parties* to the contest that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within thirty days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that should such adverse claimant fail to do so, his adverse claim will be considered waived, and the application for patent be allowed to proceed upon its merits.

51. When an adverse claim is filed as aforesaid, the register or receiver will indorse upon the same the precise date of filing, and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be suspended, with the exception of the completion of the publication and posting of notices and plat, and the filing of the necessary proof thereof, until the controversy shall have been adjudicated in court, or the adverse claim waived or withdrawn.

52. The proceedings after rendition of judgment by the court in such case are so clearly defined by the act itself as to render it unnecessary to enlarge thereon in this place.

53. The proceedings to obtain patents for claims usually called placers, including all forms of deposit, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where said placer-claim shall be upon surveyed lands, and conform to legal subdivisions, no further survey or plat will be required, and all placer mining-claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer-claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands. But where such claims are located previous to the public surveys, and do not conform to legal subdivisions, survey, plat, and entry thereof may be made according to the boundaries thereof, provided the location is in all respects legal.

54. The proceedings for obtaining patents for veins or lodes having already been fully given, it will not be necessary to repeat them here; it being thought that careful attention thereto by applicants and the local officers will enable them to act understandingly in the matter and make such slight modifications in the notice, or otherwise, as may be necessary in view of the different nature of the two classes of claims, placer-claims being fixed, however, at two dollars and fifty cents per acre, or fractional part of an acre.

55. By section 2330, authority is given for the subdivision of forty-acre legal subdivisions into *ten-acre* lots, which is intended for the greater convenience of miners in segregating their claims both from one another and from intervening agricultural lands.

56. It is held, therefore, that under a proper construction of the law these ten-acre lots in mining-districts should be considered and dealt with, to all intents and purposes, as legal subdivisions, and that an applicant having a legal claim which conforms to one or more of these ten-acre lots, either adjoining or cornering, may make entry thereof, after the usual proceedings, without further survey or plat.

57. In cases of this kind, however, the notice given of the application must be very specific and accurate in description, and as the forty-acre tracts may be subdivided into ten-acre lots, either in the form of squares of ten by ten chains, or of parallelograms five by twenty chains, so long as the lines are parallel and at right angles with the lines of the public surveys, it will be necessary that the notice and application state specifically what ten-acre lots are sought to be patented, in addition to the other *data* required in the notice.

58. Where the ten-acre subdivision is in the form of a square it may be described, for instance, as the "S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$," or, if in the form of a parallelogram as aforesaid, it may be described as the "W. $\frac{1}{2}$ of the W. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ (or the N. $\frac{1}{2}$ of the S. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$) of section ———, township ———, range ———," as the case may be; but, in addition to this description of the land, the notice must give all the other *data* that is required in a mineral application, by which parties may be put on inquiry as to the premises sought to be patented. The proof submitted with applications for claims of this kind must show clearly the character and the extent of the improvements upon the premises.

Inasmuch as the surveyor-general has no duty to perform in connection with the entry of a placer claim of legal subdivisions, the proof of

improvements must show their value to be not less than *five hundred dollars* and that they were made by the applicant for patent or his grantors.

59. Applicants for patent to a placer-claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement; and the vein or lode must be surveyed and marked upon the plat; the field-notes and plat giving the area of the lode claim or claims and the area of the placer separately. If veins or lodes lying within a placer location are owned by other parties, the fact should be distinctly stated in the application for patent, and in all the notices. It should be remembered that an application which omits to include an application for a known vein or lode therein, must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the affidavit of claimant and one or more witnesses.

60. When an adverse claim is filed to a placer application, the proceedings are the same as in the case of vein or lode claims, already described.

## QUANTITY OF PLACER GROUND SUBJECT TO LOCATION.

61. By section 2330 it is declared that no location of a placer-claim, made after July 9, 1870, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys.

62. Section 2331 provides that all placer mining-claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public surveys and the subdivisions of such surveys, and no such locations shall include more than twenty acres for each individual claimant.

63. The foregoing provisions of law are construed to mean that after the 9th day of July, 1870, no location of a placer-claim can be made to exceed one hundred and sixty acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location made by an individual can exceed twenty acres, and no location made by an association of individuals can exceed one hundred and sixty acres, which location of one hundred and sixty acres cannot be made by a less number than eight *bona-fide* locators; and no local laws or mining regulations can restrict a placer location to less than twenty acres, although the locator is not compelled to take so much.

64. The regulations hereinbefore given as to the manner of marking locations on the ground, and placing the same on record, must be observed in the case of placer locations, so far as the same are applicable; the law requiring, however, that where placer-claims are upon *surveyed* public lands the locations must hereafter be made to conform to legal subdivisions thereof as near as practicable.

65. With regard to the proofs necessary to establish the possessory right to a placer-claim, section 2332 provides that "where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining-claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim."

66. This provision of law will greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possesssory right to which all controversy or litigation has long been settled.

67. When an applicant desires to make his proof of possessory right in accordance with this provision of law, you will not require him to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will require him to furnish a duly certified copy of the statute of limitations of mining-claims for the State or Territory, together with his sworn statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining-ground covered by his application; the area thereof, the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim, and, if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and *bona fides* which he may desire to submit in support of his claim.

68. There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining-claims in the State or Territory as aforesaid, other than that which has been finally decided in favor of the claimant.

69. The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corrobative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

70. It will be to the advantage of claimants to make their proofs as full and complete as practicable.

## MILL-SITES.

71. Section 2337 provides that, "where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface-ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz-mill or reduction-works, not owning a mine in connection therewith, may also receive a patent for his mill-site, as provided in this section."

72. To avail themselves of this provision of law, parties holding the possessory right to a vein or lode, and to a piece of non-mineral land not contiguous thereto, for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337 United States Revised Statutes, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land-office their application for a patent, under oath, in manner already set forth

herein, which application, together with the plat and field-notes, may include, embrace, and describe, in addition to the vein or lode, such non-contiguous mill-site, and after due proceedings as to notice, &c., a patent will be issued conveying the same as one claim.

73. In making the survey in a case of this kind, the lode-claim should be described in the plat and field-notes as "Lot No. 37, A," and the mill-site as "Lot No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill-site to a corner of the lode-claim to be invariably given in such plat and field-notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill-site as well as upon the vein or lode for the statutory period of sixty days. In making the entry no separate receipt or certificate need be issued for the mill-site, but the whole area of both lode and mill-site will be embraced in one entry, the price being five dollars for each acre and fractional part of an acre embraced by such lode and mill-site claim.

74. In case the owner of a quartz-mill or reduction-works is not the owner or claimant of a vein or lode, the law permits him to make application therefor in the same manner prescribed herein for mining-claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill-site at said price per acre.

75. In every case there must be satisfactory proof that the land claimed as a mill-site is not mineral in character, which proof may, where the matter is unquestioned, consist of the sworn statement of the claimant, supported by that of one or more disinterested persons capable from acquaintance with the land to testify understandingly.

76. The law expressly limits mill-site locations made from and after its passage to *five acres.*

77. The registers and receivers will preserve an unbroken consecutive series of numbers for all mineral entries.

### PROOF OF CITIZENSHIP OF MINING-CLAIMANTS.

78. The proof necessary to establish the citizenship of applicants for mining-patents must be made in the following manner: In case of an incorporated company, a certified copy of their charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the affidavit of their duly authorized agent, made upon his own knowledge, or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This affidavit must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the affidavit of citizenship to act for them in the matter of their application for patent.

79. In case of an individual or an association of individuals who do not appear by their duly authorized agent, you will require the affidavit of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence.

80. In case an applicant has declared his intention to become a citizen, or has been naturalized, his affidavit must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

81. The affidavit of the claimant as to his citizenship may be taken before the register or receiver, or any other officer authorized to administer oaths within the land-district. If citizenship is established by the testimony of disinterested persons, such testimony may be taken at any

place before any person authorized to administer oaths, and whose official character is duly verified.

APPOINTMENT OF DEPUTY SURVEYORS OF MINING-CLAIMS—CHARGES FOR SURVEYS AND PUBLICATIONS—FEES OF REGISTERS AND RECEIVERS, &C.

82. Section 2334 provides for the appointment of surveyors of mineral claims, authorizes the Commissioner of the General Land Office to establish the rates to be charged for surveys and for newspaper publications, prescribes the fees allowed to the local officers for receiving and acting upon applications for mining-patents and for adverse claims thereto, &c.

Under this authority of law the following rates have been established as the maximum charges for newspaper publications in mining cases:

*a* Where a daily newspaper is designated the charge shall not exceed seven dollars for each ten lines of space occupied, and where a weekly newspaper is designated as the medium of publication five dollars for the same space will be allowed. Such charge shall be accepted as full payment for publication in each issue of the newspaper for the entire period required by law.

It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and the said rates established upon the understanding that they are to be in the usual body-type used for advertisements.

*b* For the publication of citations in contests or hearings involving the character of lands, the charges shall not exceed eight dollars for five publications in weekly newspapers, or ten dollars for publications in daily newspapers for thirty days.

83. The surveyors-general of the several districts will, in pursuance of said law, appoint in each land-district as many *competent* deputies for the survey of mining-claims as may seek such appointment; it being distinctly understood that all expenses of these notices and surveys are to be borne by the mining-claimants and not by the United States; the system of making *deposits* for mineral surveys, as required by previous instructions, being hereby revoked as regards *field-work;* the claimant having the option of employing *any* deputy surveyor within such district to do his work in the field.

84. With regard to the *platting* of the claim and other *office-work* in the surveyor-general's office, that officer will make an estimate of the cost thereof, which amount the claimant will deposit with any assistant United States treasurer, or designated depository, in favor of the United States Treasurer, to be passed to the credit of the fund created by "individual depositors for surveys of the public lands," and file with the surveyor-general duplicate certificates of such deposit in the usual manner.

85. The surveyors-general will endeavor to appoint mineral deputy surveyors, so that one or more may be located in each mining-district for the greater convenience of miners.

86. The usual oaths will be required of these deputies and their assistants as to the correctness of each survey executed by them.

The duty of the deputy mineral surveyor ceases when he has executed the survey and returned the field-notes and preliminary plat thereof with his report to the surveyor-general. He will not be allowed to prepare for the mining-claimant the papers in support of an application for patent, or otherwise perform the duties of an attorney before the land-office in connection with a mining-claim.

The surveyors-general and local land-officers are expected to report any infringement of this regulation to this office.

87. The law requires that each applicant shall file with the register and receiver a sworn statement of all charges and fees paid by him for publication of notice and for survey; together with all fees and money paid the register and receiver, which sworn statement is required to be transmitted to this office, for the information of the Commissioner.

88. Should it appear that excessive or exorbitant charges have been made by any surveyor or any publisher, prompt action will be taken with the view of correcting the abuse.

89. The fees payable to the register and receiver for filing and acting upon applications for mineral-land patents are five dollars to each officer, to be paid by the applicant for patent at the time of filing, and the like sum of five dollars is payable to each officer by an adverse claimant at the time of filing his adverse claim.

90. All fees or charges under this law may be paid in United States currency.

91. The register and receiver will, at the close of each month, forward to this office an abstract of mining-applications filed, and a register of receipts, accompanied with an abstract of mineral lands sold, and an abstract of adverse claims filed.

92. The fees and purchase-money received by registers and receivers must be placed to the credit of the United States in the receiver's monthly and quarterly account, charging up in the disbursing account the sums to which the register and receiver may be respectively entitled as fees and commissions, with limitations in regard to the legal maximum.

## HEARINGS TO ESTABLISH THE CHARACTER OF LANDS.

93. In every case where it becomes necessary under the law and existing instructions of this office that a hearing be held and testimony taken for the purpose of ascertaining the mineral or agricultural character of land, the local officers are directed to cause the evidence to be taken before a duly qualified officer whose office is located nearest the land in dispute, the distance to be computed by ordinary routes of travel.

Whenever the local office comes within this rule, the hearing will be held before the register and receiver.

It is intended to cause these hearings to be held, as far as practicable, in such manner as to afford the least inconvenience to persons interested. Should it appear, therefore, by written stipulation of all the parties that this purpose will best be subserved by the designation of any particular officer authorized to administer oaths within the land-district in which the land in controversy is situated, the instructions herein may be departed from in accordance with such stipulation. Such deviation may also be allowed where the officer who would, otherwise, be designated is an interested party, or where, for other good reason, his selection would be improper.

When the evidence is taken before an officer other than the register and receiver, the record should be sealed up, the title of the case indorsed on the envelope, and the whole returned by mail or express to the register and receiver.

On the 27th April, 1880, in accordance with the directions of the Secretary of the Interior this office revoked the withdrawals theretofore made, upon general information, that vast tracts of public land were mineral in character, and instructed the local officers, in the absence of a specific allegation of the mineral character of land to allow applications for agricultural entry thereof, upon due proof.

Hereafter the only tracts of public land that will be withheld from entry as agricultural land on account of its mineral character, will be such as are returned by the surveyor-general as mineral; and even the presumption which is supported by such return may be overcome by testimony taken at a regular hearing.

94. Hearings to determine the character of land, as practically distinguished, are of two kinds:

1st. Where lands which are sought to be entered and patented as agricultural are alleged by affidavit to be mineral, or when sought as mineral their non-mineral character is alleged.

The proceedings relative to this class are in the nature of a contest between two or more known parties, and the testimony may be taken on personal notice of at least ten days, duly served on all parties, or, if they cannot be found, then by publication, for thirty days in a newspaper of general circulation, to be designated by the register of the land-office as published nearest to the land in controversy. If publication is made in a weekly newspaper, the notice must be inserted in five consecutive weekly issues thereof.

2d. When lands are returned as mineral by the surveyor-general.

When such lands are sought to be entered as agricultural, notice must be given by publication for thirty days, as aforesaid.

95. All notices must describe the land, give the name and address of the claimant, the character of his claim, and the time, place, and purpose of the hearing.

Proof of service of notice, when personal, must consist of either acknowledgment of service indorsed on the citation, (which is always desirable,) or the affidavit of the party serving the same, giving date, place, and manner of service, indorsed as aforesaid.

Proof of publication must be the affidavit of the publisher of the newspaper, stating the period of publication, giving dates, stating whether in a daily or weekly issue, and a copy of the notice so published must be attached to, and form a part of, the affidavit.

Proof of posting on the claim must be made by the affidavits of two or more persons who state when and where the notice was posted; that it remained so posted during the prescribed period, giving dates, and a copy of the notice so posted must be attached to, and made a part of, the affidavits.

Proof of notice is indispensable to the regularity of proceedings and must accompany the record in every case.

The expense of notice must in every case be paid by the parties thereto.

96. At the hearing there must be filed the affidavit of the publisher of the paper that the said notice was published for the required time, stating when and for how long such publication was made, a printed copy thereof to be attached and made a part of the affidavit.

97. At the hearing the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or other valuable deposit which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof—whether of the shallow-surface description, or of the deep cement, blue

lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular ten-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all.

98. The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, and the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular ten-acre subdivision such crops are raised; also which of these subdivisions embrace his improvements, giving in detail the extent and value of his improvements, such as house, barn, vineyard, orchard, fencing, etc.

99. It is thought that *bona fide* settlers upon lands really agricultural will be able to show, by a clear, logical, and succinct chain of evidence, that their claims are founded upon law and justice; while parties who have made little or no permanent agricultural improvements, and who only seek title for speculative purposes, on account of the mineral deposits known to themselves to be contained in the land, will be defeated in their intentions.

100. The testimony should be as full and complete as possible; and, in addition to the leading points indicated above, everything of importance bearing upon the question of the character of the land should be elicited at the hearing.

101. Where the testimony is taken before an officer who does not use a seal, other than the register and receiver, the official character of such officer must be attested by a clerk of a court of record, and the testimony transmitted to the register and receiver, who will thereupon examine and forward the same to this office, with their joint opinion as to the character of the land as shown by the testimony.

102. When the case comes before this office, such an award of the land will be made as the law and the facts may justify; and in cases where a survey is necessary to set apart the mineral from the agricultural land in any forty-acre tract, the necessary instructions will be issued to enable the agricultural claimant, *at his own expense*, to have the work done, at his option, either by United States deputy, county, or other local surveyor; the survey in such case may be executed in such manner as will segregate the portion of land actually containing the mine, and used as surface-ground for the convenient working thereof, from the remainder of the tract, which remainder will be patented to the agriculturist to whom the same may have been awarded, subject, however, to the condition that the land may be entered upon by the proprietor of any vein or lode for which a patent has been issued by the United States for the purpose of extracting and removing the ore from the same, where found to penetrate or intersect the land so patented as agricultural, as stipulated by the mining-act.

103. Such survey when executed must be properly sworn to by the surveyor, either before a notary public, officer of a court of record, or before the register or receiver, the deponent's character and credibility to be properly certified to by the officer administering the oath.

104. Upon the filing of the plat and field-notes of such survey, duly sworn to as aforesaid, you will transmit the same to the surveyor-general for his verification and approval; who, if he finds the work correctly performed, will properly mark out the same upon the original township-plat in his office, and furnish authenticated copies of such plat and description both to the proper local land-office and to this office, to be affixed to the duplicate and triplicate township-plats respectively.

105. In cases where a portion of a forty-acre tract is awarded to an agricultural claimant and he causes the segregation thereof from the mineral portion, as aforesaid, such agricultural portion will not be given a numerical designation as in the case of surveyed mineral claims, but will simply be described as the "Fractional ——— quarter of the ——— quarter of section ———, in township ———, of range ———, meridian, containing ——— acres, the same being exclusive of the land adjudged to be mineral in said forty-acre tract."

106. The surveyor must correctly compute the area of such agricultural portion, which computation will be verified by the surveyor-general.

107. After the authenticated plat and field-notes of the survey have been received from the surveyor-general, this office will issue the necessary order for the entry of the land, and in issuing the receiver's receipt and register's patent certificate you will invariably be governed by the description of the land given in the order from this office.

108. The fees for taking testimony and reducing the same to writing in these cases will have to be defrayed by the parties in interest. Where such testimony is taken before any other officer than the register and receiver, the register and receiver will be entitled to no fees.

109. If, upon a review of the testimony at this office, a ten-acre tract should be found to be properly mineral in character, that fact will be no bar to the execution of the settler's legal right to the remaining *non-mineral* portion of his claim, if contiguous.

110. No fear need be entertained that miners will be permitted to make entries of tracts ostensibly as mining-claims, which are not mineral, simply for the purpose of obtaining possession and defrauding settlers out of their valuable agricultural improvements; it being almost an impossibility for such a fraud to be consummated under the laws and regulations applicable to obtaining patents for mining-claims.

111. The fact that a certain tract of land is decided upon testimony to be mineral in character is by no means equivalent to an award of the land to a miner. A miner is compelled by law to give sixty days' publication of notice, and posting of diagrams and notices, as a preliminary step; and then, before he can enter the land, he must show that the land yields mineral; that he is entitled to the possessory right thereto in virtue of compliance with local customs or rules of miners, or by virtue of the statute of limitations; that he or his grantors have expended, in actual labor and improvements, an amount of not less than five hundred dollars thereon, and that the claim is one in regard to which there is no controversy or opposing claim. After all these proofs are met, he is entitled to have a survey made at his own cost where a survey is required, after which he can enter and pay for the land embraced by his claim.

112. Blank forms for proofs in mineral cases are not furnished by the General Land Office.

Respectfully,

N. C. McFARLAND,
*Commissioner.*

DEPARTMENT OF INTERIOR,
*October* 31, 1881.

Approved.

S. J. KIRKWOOD,
*Secretary.*